

ESHB 3179 - S COMM AMD

By Committee on Ways & Means

ADOPTED AND ENGROSSED 03/05/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.14.450 and 2009 c 551 s 1 are each amended to read
4 as follows:

5 (1) A county legislative authority may submit an authorizing
6 proposition to the county voters at a primary or general election and,
7 if the proposition is approved by a majority of persons voting, impose
8 a sales and use tax in accordance with the terms of this chapter. The
9 title of each ballot measure must clearly state the purposes for which
10 the proposed sales and use tax will be used. (~~Funds raised under this
11 tax shall not supplant existing funds used for these purposes, except
12 as follows: Up to one hundred percent may be used to supplant existing
13 funding in calendar year 2010; up to eighty percent may be used to
14 supplant existing funding in calendar year 2011; up to sixty percent
15 may be used to supplant existing funding in calendar year 2012; up to
16 forty percent may be used to supplant existing funding in calendar year
17 2013; and up to twenty percent may be used to supplant existing funding
18 in calendar year 2014. For purposes of this subsection, existing funds
19 means the actual operating expenditures for the calendar year in which
20 the ballot measure is approved by voters. Actual operating
21 expenditures excludes lost federal funds, lost or expired state grants
22 or loans, extraordinary events not likely to reoccur, changes in
23 contract provisions beyond the control of the county or city receiving
24 the services, and major nonrecurring capital expenditures.)) The rate
25 of tax under this section may not exceed three-tenths of one percent of
26 the selling price in the case of a sales tax, or value of the article
27 used, in the case of a use tax.~~

28 (2)(a) A city legislative authority may submit an authorizing
29 proposition to the city voters at a primary or general election and, if
30 the proposition is approved by a majority of persons voting, impose a

1 sales and use tax in accordance with the terms of this chapter. The
2 title of each ballot measure must clearly state the purposes for which
3 the proposed sales and use tax will be used. The rate of tax under
4 this subsection may not exceed one-tenth of one percent of the selling
5 price in the case of a sales tax, or value of the article used, in the
6 case of a use tax. A city may not begin imposing a tax approved by the
7 voters under this subsection prior to January 1, 2011.

8 (b) If a county adopts an ordinance or resolution to submit a
9 ballot proposition to the voters to impose the sales and use tax under
10 subsection (1) of this section prior to a city within the county
11 adopting an ordinance or resolution to submit a ballot proposition to
12 the voters to impose the tax under this subsection, the rate of tax by
13 the city under this subsection may not exceed an amount that would
14 cause the total county and city tax rate under this section to exceed
15 three-tenths of one percent. This subsection (2)(b) also applies if
16 the county and city adopt an ordinance or resolution to impose sales
17 and use taxes under this section on the same date.

18 (c) If the city adopts an ordinance or resolution to submit a
19 ballot proposition to the voters to impose the sales and use tax under
20 this subsection prior to the county in which the city is located, the
21 county must provide a credit against its tax under subsection (1) of
22 this section for the city tax under this subsection to the extent the
23 total county and city tax rate under this section would exceed three-
24 tenths of one percent.

25 (3) The tax authorized in this section is in addition to any other
26 taxes authorized by law and must be collected from those persons who
27 are taxable by the state under chapters 82.08 and 82.12 RCW upon the
28 occurrence of any taxable event within the county.

29 ~~((+3))~~ (4) The retail sale or use of motor vehicles, and the lease
30 of motor vehicles for up to the first thirty-six months of the lease,
31 are exempt from tax imposed under this section.

32 ~~((+4))~~ (5) One-third of all money received under this section must
33 be used solely for criminal justice purposes, fire protection purposes,
34 or both. For the purposes of this subsection, "criminal justice
35 purposes" has the same meaning as provided in RCW 82.14.340.

36 ~~((+5))~~ (6) Money received by a county under subsection (1) of this
37 section must be shared between the county and the cities as follows:

1 Sixty percent must be retained by the county and forty percent must be
2 distributed on a per capita basis to cities in the county.

3 (7) Tax proceeds received by a city imposing a tax under this
4 section must be shared between the county and city as follows: Fifteen
5 percent must be distributed to the county and eighty-five percent is
6 retained by the city.

7 **Sec. 2.** RCW 82.14.460 and 2009 c 551 s 2 are each amended to read
8 as follows:

9 (1)(a) A county legislative authority may authorize, fix, and
10 impose a sales and use tax in accordance with the terms of this
11 chapter.

12 (b) If a county with a population over eight hundred thousand has
13 not imposed the tax authorized under this subsection by January 1,
14 2011, any city with a population over thirty thousand located in that
15 county may authorize, fix, and impose the sales and use tax in
16 accordance with the terms of this chapter. The county must provide a
17 credit against its tax for the full amount of tax imposed under this
18 subsection (1)(b) by any city located in that county if the county
19 imposes the tax after January 1, 2011.

20 (2) The tax authorized in this section (~~shall be~~) is in addition
21 to any other taxes authorized by law and (~~shall~~) must be collected
22 from those persons who are taxable by the state under chapters 82.08
23 and 82.12 RCW upon the occurrence of any taxable event within the
24 county for a county's tax and within a city for a city's tax. The rate
25 of tax (~~shall~~) equals one-tenth of one percent of the selling price
26 in the case of a sales tax, or value of the article used, in the case
27 of a use tax.

28 (3) Moneys collected under this section (~~shall~~) must be used
29 solely for the purpose of providing for the operation or delivery of
30 chemical dependency or mental health treatment programs and services
31 and for the operation or delivery of therapeutic court programs and
32 services. For the purposes of this section, "programs and services"
33 includes, but is not limited to, treatment services, case management,
34 and housing that are a component of a coordinated chemical dependency
35 or mental health treatment program or service.

36 (4) All moneys collected under this section must be used solely for
37 the purpose of providing new or expanded programs and services as

1 provided in this section, except a portion of moneys collected under
2 this section may be used to supplant existing funding for these
3 purposes in any county or city as follows: Up to fifty percent may be
4 used to supplant existing funding in calendar year 2010; up to forty
5 percent may be used to supplant existing funding in calendar year 2011;
6 up to thirty percent may be used to supplant existing funding in
7 calendar year 2012; up to twenty percent may be used to supplant
8 existing funding in calendar year 2013; and up to ten percent may be
9 used to supplant existing funding in calendar year 2014.

10 (5) Nothing in this section may be interpreted to prohibit the use
11 of moneys collected under this section for the replacement of lapsed
12 federal funding previously provided for the operation or delivery of
13 services and programs as provided in this section.

14 **Sec. 3.** RCW 82.14.340 and 1995 c 309 s 1 are each amended to read
15 as follows:

16 (1) The legislative authority of any county may fix and impose a
17 sales and use tax in accordance with the terms of this chapter,
18 provided that such sales and use tax is subject to repeal by
19 referendum, using the procedures provided in RCW 82.14.036. The
20 referendum procedure provided in RCW 82.14.036 is the exclusive method
21 for subjecting any county sales and use tax ordinance or resolution to
22 a referendum vote.

23 (2) The tax authorized in this section (~~((shall be))~~) is in addition
24 to any other taxes authorized by law and (~~((shall))~~) must be collected
25 from those persons who are taxable by the state pursuant to chapters
26 82.08 and 82.12 RCW upon the occurrence of any taxable event within
27 such county. The rate of tax (~~((shall))~~) equals one-tenth of one percent
28 of the selling price (in the case of a sales tax) or value of the
29 article used (in the case of a use tax).

30 (3) When distributing moneys collected under this section, the
31 state treasurer (~~((shall))~~) must distribute ten percent of the moneys to
32 the county in which the tax was collected. The remainder of the moneys
33 collected under this section (~~((shall))~~) must be distributed to the
34 county and the cities within the county ratably based on population as
35 last determined by the office of financial management. In making the
36 distribution based on population, the county (~~((shall))~~) must receive
37 that proportion that the unincorporated population of the county bears

1 to the total population of the county and each city (~~shall~~) must
2 receive that proportion that the city incorporated population bears to
3 the total county population.

4 (4) Moneys received from any tax imposed under this section
5 (~~shall~~) must be expended (~~exclusively~~) for criminal justice
6 purposes (~~and shall not be used to replace or supplant existing~~
7 ~~funding~~). Criminal justice purposes are defined as activities that
8 substantially assist the criminal justice system, which may include
9 circumstances where ancillary benefit to the civil justice system
10 occurs, and which includes domestic violence services such as those
11 provided by domestic violence programs, community advocates, and legal
12 advocates, as defined in RCW 70.123.020. (~~Existing funding for~~
13 ~~purposes of this subsection is defined as calendar year 1989 actual~~
14 ~~operating expenditures for criminal justice purposes. Calendar year~~
15 ~~1989 actual operating expenditures for criminal justice purposes~~
16 ~~exclude the following: Expenditures for extraordinary events not~~
17 ~~likely to reoccur, changes in contract provisions for criminal justice~~
18 ~~services, beyond the control of the local jurisdiction receiving the~~
19 ~~services, and major nonrecurring capital expenditures.~~)

20 (5) In the expenditure of funds for criminal justice purposes as
21 provided in this section, cities and counties, or any combination
22 thereof, are expressly authorized to participate in agreements,
23 pursuant to chapter 39.34 RCW, to jointly expend funds for criminal
24 justice purposes of mutual benefit. Such criminal justice purposes of
25 mutual benefit include, but are not limited to, the construction,
26 improvement, and expansion of jails, court facilities, (~~and~~) juvenile
27 justice facilities, and services with ancillary benefits to the civil
28 justice system.

29 **Sec. 4.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to
30 read as follows:

31 For the purposes of this chapter:

32 (1) "Purchase price" means the same as sales price as defined in
33 RCW 82.08.010;

34 (2)(a) "Value of the article used" (~~shall be~~) is the purchase
35 price for the article of tangible personal property, the use of which
36 is taxable under this chapter. The term also includes, in addition to
37 the purchase price, the amount of any tariff or duty paid with respect

1 to the importation of the article used. In case the article used is
2 acquired by lease or by gift or is extracted, produced, or manufactured
3 by the person using the same or is sold under conditions wherein the
4 purchase price does not represent the true value thereof, the value of
5 the article used (~~shall be~~) is determined as nearly as possible
6 according to the retail selling price at place of use of similar
7 products of like quality and character under such rules as the
8 department may prescribe.

9 (b) In case the articles used are acquired by bailment, the value
10 of the use of the articles so used (~~shall~~) must be in an amount
11 representing a reasonable rental for the use of the articles so bailed,
12 determined as nearly as possible according to the value of such use at
13 the places of use of similar products of like quality and character
14 under such rules as the department of revenue may prescribe. In case
15 any such articles of tangible personal property are used in respect to
16 the construction, repairing, decorating, or improving of, and which
17 become or are to become an ingredient or component of, new or existing
18 buildings or other structures under, upon, or above real property of or
19 for the United States, any instrumentality thereof, or a county or city
20 housing authority created pursuant to chapter 35.82 RCW, including the
21 installing or attaching of any such articles therein or thereto,
22 whether or not such personal property becomes a part of the realty by
23 virtue of installation, then the value of the use of such articles so
24 used (~~shall be~~) is determined according to the retail selling price
25 of such articles, or in the absence of such a selling price, as nearly
26 as possible according to the retail selling price at place of use of
27 similar products of like quality and character or, in the absence of
28 either of these selling price measures, such value may be determined
29 upon a cost basis, in any event under such rules as the department of
30 revenue may prescribe.

31 (c) In the case of articles owned by a user engaged in business
32 outside the state which are brought into the state for no more than one
33 hundred eighty days in any period of three hundred sixty-five
34 consecutive days and which are temporarily used for business purposes
35 by the person in this state, the value of the article used (~~shall~~)
36 must be an amount representing a reasonable rental for the use of the
37 articles, unless the person has paid tax under this chapter or chapter

1 82.08 RCW upon the full value of the article used, as defined in (a) of
2 this subsection.

3 (d) In the case of articles manufactured or produced by the user
4 and used in the manufacture or production of products sold or to be
5 sold to the department of defense of the United States, the value of
6 the articles used (~~(shall be)~~) is determined according to the value of
7 the ingredients of such articles.

8 (e) In the case of an article manufactured or produced for purposes
9 of serving as a prototype for the development of a new or improved
10 product, the value of the article used (~~(shall be)~~) is determined by:

11 (i) The retail selling price of such new or improved product when first
12 offered for sale; or (ii) the value of materials incorporated into the
13 prototype in cases in which the new or improved product is not offered
14 for sale.

15 (f) In the case of an article purchased with a direct pay permit
16 under RCW 82.32.087, the value of the article used (~~(shall be)~~) is
17 determined by the purchase price of such article if, but for the use of
18 the direct pay permit, the transaction would have been subject to sales
19 tax;

20 (3) "Value of the service used" means the purchase price for the
21 digital automated service or other service, the use of which is taxable
22 under this chapter. If the service is received by gift or under
23 conditions wherein the purchase price does not represent the true value
24 thereof, the value of the service used (~~(shall be)~~) is determined as
25 nearly as possible according to the retail selling price at place of
26 use of similar services of like quality and character under rules the
27 department may prescribe;

28 (4) "Value of the extended warranty used" means the purchase price
29 for the extended warranty, the use of which is taxable under this
30 chapter. If the extended warranty is received by gift or under
31 conditions wherein the purchase price does not represent the true value
32 of the extended warranty, the value of the extended warranty used
33 (~~(shall be)~~) is determined as nearly as possible according to the
34 retail selling price at place of use of similar extended warranties of
35 like quality and character under rules the department may prescribe;

36 (5) "Value of the digital good or digital code used" means the
37 purchase price for the digital good or digital code, the use of which
38 is taxable under this chapter. If the digital good or digital code is

1 acquired other than by purchase, the value of the digital good or
2 digital code must be determined as nearly as possible according to the
3 retail selling price at place of use of similar digital goods or
4 digital codes of like quality and character under rules the department
5 may prescribe;

6 (6) "Use," "used," "using," or "put to use" have their ordinary
7 meaning, and mean:

8 (a) With respect to tangible personal property, except for natural
9 gas and manufactured gas, the first act within this state by which the
10 taxpayer takes or assumes dominion or control over the article of
11 tangible personal property (as a consumer), and include installation,
12 storage, withdrawal from storage, distribution, or any other act
13 preparatory to subsequent actual use or consumption within this state;

14 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
15 first act within this state after the service has been performed by
16 which the taxpayer takes or assumes dominion or control over the
17 article of tangible personal property upon which the service was
18 performed (as a consumer), and includes installation, storage,
19 withdrawal from storage, distribution, or any other act preparatory to
20 subsequent actual use or consumption of the article within this state;

21 (c) With respect to an extended warranty, the first act within this
22 state after the extended warranty has been acquired by which the
23 taxpayer takes or assumes dominion or control over the article of
24 tangible personal property to which the extended warranty applies, and
25 includes installation, storage, withdrawal from storage, distribution,
26 or any other act preparatory to subsequent actual use or consumption of
27 the article within this state;

28 (d) With respect to a digital good or digital code, the first act
29 within this state by which the taxpayer, as a consumer, views,
30 accesses, downloads, possesses, stores, opens, manipulates, or
31 otherwise uses or enjoys the digital good or digital code;

32 (e) With respect to a digital automated service, the first act
33 within this state by which the taxpayer, as a consumer, uses, enjoys,
34 or otherwise receives the benefit of the service;

35 (f) With respect to a service defined as a retail sale in RCW
36 82.04.050(6)(b), the first act within this state by which the taxpayer,
37 as a consumer, accesses the prewritten computer software; (~~and~~)

1 (g) With respect to a service defined as a retail sale in RCW
2 82.04.050(2)(g), the first act within this state after the service has
3 been performed by which the taxpayer, as a consumer, views, accesses,
4 downloads, possesses, stores, opens, manipulates, or otherwise uses or
5 enjoys the digital good upon which the service was performed; and

6 (h) With respect to natural gas or manufactured gas, the use of
7 which is taxable under RCW 82.12.022, including gas that is also
8 taxable under the authority of RCW 82.14.230, the first act within this
9 state by which the taxpayer consumes the gas by burning the gas or
10 storing the gas in the taxpayer's own facilities for later consumption
11 by the taxpayer;

12 (7) "Taxpayer" and "purchaser" include all persons included within
13 the meaning of the word "buyer" and the word "consumer" as defined in
14 chapters 82.04 and 82.08 RCW;

15 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),
16 "retailer" means every seller as defined in RCW 82.08.010 and every
17 person engaged in the business of selling tangible personal property at
18 retail and every person required to collect from purchasers the tax
19 imposed under this chapter.

20 (ii) "Retailer" does not include a professional employer
21 organization when a covered employee coemployed with the client under
22 the terms of a professional employer agreement engages in activities
23 that constitute a sale of tangible personal property, extended
24 warranty, digital good, digital code, or a sale of any digital
25 automated service or service defined as a retail sale in RCW 82.04.050
26 (2)(a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by
27 this chapter. In such cases, the client, and not the professional
28 employer organization, is deemed to be the retailer and is responsible
29 for collecting and remitting the tax imposed by this chapter.

30 (b) For the purposes of (a) of this subsection, the terms "client,"
31 "covered employee," "professional employer agreement," and
32 "professional employer organization" have the same meanings as in RCW
33 82.04.540;

34 (9) "Extended warranty" has the same meaning as in RCW
35 82.04.050(7);

36 (10) The meaning ascribed to words and phrases in chapters 82.04
37 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and
38 effect with respect to taxes imposed under the provisions of this

1 chapter. "Consumer," in addition to the meaning ascribed to it in
2 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also
3 means any person who distributes or displays, or causes to be
4 distributed or displayed, any article of tangible personal property,
5 except newspapers, the primary purpose of which is to promote the sale
6 of products or services. With respect to property distributed to
7 persons within this state by a consumer as defined in this subsection
8 (10), the use of the property (~~shall be~~) is deemed to be by such
9 consumer.

10 **Sec. 5.** RCW 82.14.230 and 1989 c 384 s 2 are each amended to read
11 as follows:

12 (1) The governing body of any city, while not required by
13 legislative mandate to do so, may, by resolution or ordinance for the
14 purposes authorized by this chapter, fix and impose on every person a
15 use tax for the privilege of using natural gas or manufactured gas in
16 the city as a consumer.

17 (2) The tax (~~shall be~~) is imposed in an amount equal to the value
18 of the article used by the taxpayer multiplied by the rate in effect
19 for the tax on natural gas businesses under RCW 35.21.870 in the city
20 in which the article is used. The "value of the article used," does
21 not include any amounts that are paid for the hire or use of a natural
22 gas business in transporting the gas subject to tax under this
23 subsection if those amounts are subject to tax under RCW 35.21.870.

24 (3) The tax imposed under this section (~~shall~~) does not apply to
25 the use of natural or manufactured gas if the person who sold the gas
26 to the consumer has paid a tax under RCW 35.21.870 with respect to the
27 gas for which exemption is sought under this subsection.

28 (4) There (~~shall be~~) is a credit against the tax levied under
29 this section in an amount equal to any tax paid by:

30 (a) The person who sold the gas to the consumer when that tax is a
31 gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by
32 another (~~state~~) municipality or other unit of local government with
33 respect to the gas for which a credit is sought under this subsection;
34 or

35 (b) The person consuming the gas upon which a use tax similar to
36 the tax imposed by this section was paid to another (~~state~~)

1 municipality or other unit of local government with respect to the gas
2 for which a credit is sought under this subsection.

3 (5) The use tax (~~hereby~~) imposed (~~shall~~) must be paid by the
4 consumer. The administration and collection of the tax (~~hereby~~)
5 imposed (~~shall be~~) is pursuant to RCW 82.14.050.

6 **Sec. 6.** RCW 9.46.113 and 1975 1st ex.s. c 166 s 11 are each
7 amended to read as follows:

8 Any county, city or town which collects a tax on gambling
9 activities authorized pursuant to RCW 9.46.110 (~~shall~~) must use the
10 revenue from such tax primarily for the purpose of (~~enforcement of the~~
11 ~~provisions of this chapter by the county, city or town law enforcement~~
12 ~~agency~~) public safety.

13 NEW SECTION. **Sec. 7.** 2009 c 551 s 12 (uncodified) is hereby
14 repealed."

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By Committee on Ways & Means

ADOPTED AND ENGROSSED 03/05/2010

15 On page 1, line 2 of the title, after "cities;" strike the
16 remainder of the title and insert "amending RCW 82.14.450, 82.14.460,
17 82.14.340, 82.12.010, 82.14.230, and 9.46.113; and repealing 2009 c 551
18 s 12 (uncodified)."

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